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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 1, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

NORTHERN VIRGINIA ELECTRIC COOPERATIVE,

Petitioner,

v.

CASE NO. PUE-2001-00512

VIRGINIA ELECTRIC AND POWER COMPANY

d/b/a DOMINION VIRGINIA POWER,

SMITHSONIAN INSTITUTION, and U.S.

GENERAL SERVICES ADMINISTRATION,

Respondents.

For a Petition for Declaratory  
Judgment and Motion for Injunction

FINAL ORDER

On September 17, 2001, Northern Virginia Electric Cooperative ("NOVEC" or the "Cooperative") filed a Petition for Declaratory Judgment, together with a Motion for an Injunction ("Petition"), with the State Corporation Commission ("Commission"). In its Petition, NOVEC requested the Commission to declare that the proposed sale of electric energy by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power," "Dominion," or the "Company") to the Smithsonian Institution ("Smithsonian") or, alternatively, to

**Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.**

the United States General Services Administration ("GSA") for consumption at a facility to be constructed on a parcel of real estate located in Fairfax County, Virginia, to be within the service territory allotted to NOVEC and to be in violation of NOVEC's property rights under the certificate of public convenience and necessity granted to the Cooperative by the Commission pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1, et seq.) of Title 56 of the Code of Virginia (hereafter, the "Act"). The Cooperative requested the Commission to enjoin Dominion temporarily and permanently from selling and delivering any power directly or indirectly to the Smithsonian or GSA at the site.

Additionally, the Cooperative asked the Commission to declare that: (i) NOVEC is the proper provider of electric service to the Smithsonian and/or GSA project within NOVEC's certificated territory and must be granted the ability to provide electric service at the facility site; (ii) Virginia Power may not unreasonably deny a delivery point to Old Dominion Electric Cooperative ("ODEC") on behalf of NOVEC and that Dominion's denial of the delivery point is not in the best interest of Virginia ratepayers and is unlawful; (iii) any transactions or contracts between Virginia Power and the Smithsonian and/or GSA are unlawful under the Act and, therefore, are unenforceable or void; and (iv) any provision of

service by Dominion in NOVEC's certificated territory is unlawful and violates NOVEC's rights granted by the Commission in the Certificate of Public Convenience and Necessity it issued to NOVEC. NOVEC served a copy of its Petition and Motion on: Virginia Power's registered agent and two Dominion directors; Kenneth Melson, United States Attorney; John Ashcroft, United States Attorney General; the Administrator of the General Services Administration; and the Secretary and General Counsel for the Smithsonian Institute.

On October 2, 2001, the Commission issued its Preliminary Order in this matter. In its Order, the Commission docketed the proceeding, appointed a Hearing Examiner to the matter, directed Virginia Power and invited the GSA and Smithsonian to file an Answer to NOVEC's Petition on or before October 12, 2001, directed Virginia Power and NOVEC to file on or before October 16, 2001, a joint stipulation of the facts and issues upon which they agreed, together with the facts and issues upon which there was disagreement, and set issues related to the requested temporary injunction for oral argument before the Hearing Examiner.

On October 12, 2001, Dominion filed its Answer to the Petition, wherein, among other things, it denied that its sale of electricity to the Smithsonian violated Virginia law. On the same day, Virginia Power filed a counter petition requesting the

Commission to declare that Dominion had the statutory and legal obligation to provide service to the entire Smithsonian facility.

On October 12, 2001, the U.S. Department of Justice (the "United States") accepted the Commission's invitation to respond to the Petition and filed a response on behalf of the Smithsonian and GSA.<sup>1</sup> The Smithsonian, among other things, supported the assertion that Dominion should provide service to the new museum facility. The Smithsonian emphasized that its paramount and practical concern was that the construction schedule of the museum not be compromised. It contended that only the timely completion of each phase of construction would ensure that the facility opened by December 2003, the centennial of the first powered flight by the Wright Brothers.

On October 18, 2001, ODEC and the Virginia, Maryland & Delaware Association of Electric Cooperatives (the "Association") (hereafter collectively referred to as the "Cooperatives") filed a Motion for Leave to Participate as Interested Parties, together with a Statement of Interest and Motion for Expedited Consideration. NOVEC did not respond to the Cooperatives' Motion. The Smithsonian took no position on the Motion, and Virginia Power advised that while it did not

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<sup>1</sup> That Response noted that the GSA played no role in the events that led to the dispute in this proceeding.

oppose the Motion, it objected to the request for expedited consideration to the extent ODEC's request assumed a right to argue independently the motion for a temporary injunction.

In her October 22, 2001, Ruling, the Hearing Examiner granted leave for the Cooperatives to participate in the proceeding. On October 24, 2001, NOVEC filed affidavits in support of its Motion, and on October 25, 2001, NOVEC filed a pre-hearing memorandum.

On October 25, 2001, oral argument was convened before Deborah V. Ellenberg, Chief Hearing Examiner ("Chief Examiner"), to consider NOVEC's motion for a temporary injunction. Counsel appearing were William Bradford Stallard, Esquire, and JoAnne L. Nolte, Esquire, counsel for NOVEC; E. Duncan Getchell, Jr., Esquire, Kodwo Ghartey-Tagoe, Esquire, and John D. Sharer, Esquire, counsel for Virginia Power; James Patrick Guy, II, Esquire, and John A. Pirko, Esquire, counsel for the Cooperatives; Steven E. Gordon, Esquire, counsel for the United States, Smithsonian, and GSA; and Sherry H. Bridewell, Esquire, and Wayne N. Smith, Esquire, counsel for the Commission Staff. At the conclusion of the proceeding, the Chief Examiner took the matter under advisement and invited the participants in the proceeding to file simultaneous memoranda addressing whether a temporary injunction should be issued in this case.

On November 1, 2001, the Staff and the parties filed post-hearing memoranda on NOVEC's motion for a temporary injunction.

On November 2, 2001, the Chief Examiner entered a Ruling scheduling a public hearing for December 11, 2001, for the purpose of receiving evidence on the Cooperative's Petition. That Ruling established dates for the prefiling of testimony and exhibits by NOVEC, the Cooperatives, Dominion, and the Smithsonian.

On December 5, 2001, the Chief Examiner issued her Ruling on the request for a temporary injunction. After considering the arguments made, the Chief Examiner found as follows:

1. Significant and irreparable harm to the Smithsonian, one of the respondents, could result from a delay in the scheduled opening of the new museum;
2. There are remedies available, albeit at some cost, to NOVEC if the Commission ultimately finds in...[NOVEC's] favor;
3. There is some likelihood that NOVEC will prevail, at least in part, based on the point of use test applied in...[an earlier case, Prince George Electric Cooperative, For declaratory judgment and Petition of RGC (USA) Mineral Sands, Inc., and RGC (USA) Minerals, Inc., For a declaratory judgment, Case No. PUE-1996-00295, 1998 S.C.C. Ann. Rept. 344 ("Prince George")], but there are significant differences in this case that make the outcome far less than certain;
4. Any likelihood of success does not offset the substantial and irreparable harm that could face the Smithsonian if a temporary injunction was granted; and

5. The public interest, educational opportunities, and the interests and expectations of the benefactors of the facility will be adversely affected if this new museum of undisputed national importance and reputation fails to open on the centennial anniversary of the Wright Brothers' historic first flight.

The Chief Examiner denied NOVEC's motion for a temporary injunction.

A public hearing to receive evidence on the merits of the Petition was held on December 11-12, 2001. The counsel identified above appeared at the proceeding. At the conclusion of the public hearing, the Chief Examiner invited Staff and the parties to file simultaneous post-hearing briefs fourteen days after the transcript was filed and simultaneous reply briefs within five days after the post-hearing briefs were filed.

On January 31, 2002, the Staff, NOVEC, and Virginia Power filed their post-hearing briefs, and served electronic copies of their briefs on all of the case participants. The Cooperatives, by counsel, electronically served their joint post-hearing brief on all of the case participants on January 31, 2002, but filed their post-hearing brief with the Clerk of the Commission one day out of time. The Cooperatives, therefore, requested leave to accept their joint post-hearing brief one day out of time. By her Ruling entered on February 1, 2002, the Chief Examiner directed that the Cooperatives' joint brief be accepted for

filing. On February 7, 2002, simultaneous Reply Briefs were filed by the parties.

On March 20, 2002, the Chief Examiner issued her Report on the merits of NOVEC's Petition. After an extensive analysis of the facts and law, the Chief Examiner found that the combination of a "point of use" and "geographic load center" analysis should be considered to resolve the territorial dispute presented by the Petition. She further found that:

- 1) NOVEC has the right and the obligation to provide electric service to the new Smithsonian museum facility, including the hangar, the main central utility plant, four air handling unit areas, and the IMAX Theatre; and
- 2) Virginia Power has the right and obligation to provide services to the parking lot unless it transfers that territory to NOVEC.

The Chief Hearing Examiner recommended that the Commission enter an order that: (i) adopts the findings of her Report; (ii) grants the Petition of NOVEC for declaratory judgment insofar as the Commission determines that NOVEC has the exclusive right and obligation to serve the main facility; (iii) denies Virginia Power's counter petition; (iv) directs Virginia Power, ODEC, and NOVEC, in consultation with the Smithsonian, to plan how and when NOVEC will begin providing service to the Smithsonian, and submit a plan to the Commission within 30 days of the date of a final order; (v) enjoins NOVEC, ODEC, and Virginia Power to work cooperatively to accommodate a



timely and efficient transfer of service; (vi) directs NOVEC, ODEC, and Virginia Power to file a joint report of progress bimonthly until the transfer is complete; and (vii) dismisses the case from the Commission's docket of active proceedings after the transfer of service is complete.

In her analysis, the Chief Examiner noted that the property on which the Smithsonian proposed to construct its museum, and more importantly, the museum structure's points of use were bisected by the boundary line dividing the service territories allotted to Virginia Power and NOVEC without customer manipulation. She then discussed the Commission precedents relied on by Virginia Power, NOVEC, and the Cooperatives in framing their respective arguments; i.e., Prince George and Petition of Kentucky Utilities Company, d/b/a Old Dominion Power Company, For injunctive relief and/or declaratory judgment against Powell Valley Electric Cooperative, Case No. PUE-1996-00303, 1999 S.C.C. Ann. Rept. 368 ("Kentucky Utilities"). She noted that in Prince George, the Commission concluded that a point of delivery test could destroy the essence of exclusive service territories by allowing customers through the manipulation of delivery points to avoid receiving service from the utility allotted the service territory in which the customer was located. She observed that the Commission had instead adopted a "point of use" test, but concluded that the Commission

did not intend to apply that test literally and without reference to the practical realities of each factual situation:

While we do not here adopt any absolute test and will always consider the practical realities of each situation, we intend to ensure that our decisions enforce the Code's requirement of strong protection for the exclusive service territories of utilities in Virginia.<sup>2</sup>

The Chief Examiner noted that the Commission took the same position in Kentucky Utilities, observing that "[a]s discussed in Prince George, however, ... [the Commission] must decide cases involving service territory disputes in a way that is consistent with the significant protection that is afforded to territorial grants by Virginia law."<sup>3</sup>

The Chief Examiner also considered a third test, the geographic load center test, and determined it relevant to the instant case. She noted that this test was discussed in Public Service Co. v. Pub. Utility Comm'n, 765 P.2d 1015, 1019 (Colorado 1988) ("Colorado PSC case"), and that the Colorado PSC case was cited with approval in Prince George. She described the geographic load center test as providing that the utility that serves the majority of a customer's load was generally designated as the provider for the entire load regardless of territorial boundaries.

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<sup>2</sup> Chief Hearing Examiner's Report at 14, citing Prince George at 349.

<sup>3</sup> Chief Hearing Examiner's Report at 14, citing Kentucky Utilities at 376.

The Chief Examiner reasoned that strict application of the "point of use" test in the instant case would result in Virginia Power and NOVEC each serving only the points of use on facilities located in their respective service territories. All the case participants acknowledged that a literal application of this test was not practical given the circumstances of the case. She recognized that the Act was intended to prevent economic waste and the public inconvenience resulting from duplication of utilities' facilities; e.g., multiple bills from two providers and dual electric service lines. She concluded that the Commission had discretion to determine what test or tests best preserved the integrity of exclusive service territories.

The Chief Examiner noted that all parties recognized that the practical realities of each territorial dispute should be considered, but differed on what "practical realities" were relevant in the case.

After considering the evidence, among other things, the Chief Examiner observed that there were very relevant similarities between the captioned matter and the Colorado PSC case. She noted that the majority of the Smithsonian museum structures, i.e., the hangar and the heating and cooling equipment for the museum, would be in NOVEC's territory. Fewer museum facilities, i.e., the building entrance, a portion of the IMAX theatre, and the parking lot, were in Virginia Power's

territory. She opined that the practical realities of the case supported the conclusion that when a facility straddles a service line boundary, a geographic load center test should be applied, and NOVEC should be afforded the exclusive right to serve the principal Smithsonian museum facility, because more load centers were in its territory. She reasoned that because the Smithsonian and Virginia Power have expressed their strong opinion that it would be unreasonable for two utilities to serve the Smithsonian, Virginia Power could agree to swap territory with NOVEC so that NOVEC could also serve the parking lot.

The Chief Examiner concluded that there appeared to be no obstacle to a transfer of service, facilities, and meters from Virginia Power to NOVEC, similar to that ordered in Prince George, and a transfer, if ordered by the Commission, was not likely to have a negative effect on the museum's construction schedule or the delivery of electric service. The Chief Examiner, therefore, recommended that the Commission direct Virginia Power to continue to deliver electricity to the Smithsonian by transferring the electricity to NOVEC at the existing point of delivery for the Smithsonian pursuant to § 56-249.1 of the Code of Virginia until such time as Virginia Power and NOVEC could make the necessary facilities transfers and boundary realignments. The Chief Examiner invited the parties

to file comments to her report within seven (7) business days from the Report's date.

On March 25, 2002, the Commission granted a motion filed by Dominion on March 22, 2002, and extended the time to April 3, 2002, in which all parties could file comments in response to the March 20, 2002, Report of Deborah V. Ellenberg, Chief Hearing Examiner.

On April 3, 2002, the Cooperatives and NOVEC each filed comments in support of the Chief Examiner's report. NOVEC urged the Commission to adopt the Chief Examiner's findings and to grant the Petition.

The Cooperatives supported the Chief Examiner's analysis and, among other things, urged the Commission to enter an Order requiring NOVEC to serve the entire museum facility and relieving Virginia Power of any obligation to serve the de minimis points of use associated with the museum that are located within Dominion's territory.

On April 3, 2002, the United States requested leave to present oral argument on the parties' comments on the Chief Hearing Examiner's Report. The United States asserted that the Commission would benefit from oral argument in light of the important issues at stake in the proceeding; i.e., the potential for delay in opening the Smithsonian's museum and the impact of the Commission's decision on prospective federal electric

consumers whose real property straddles the service territories of two electric utilities.

On the same day, the United States also filed its comments and objections to the Chief Hearing Examiner's Report and recommendations. In its comments, the United States questioned the Commission's jurisdiction to regulate the conduct of federal agencies and instrumentalities such as the Smithsonian and the GSA. It asserted that NOVEC had cited no authority that permitted the Commission to entertain a lawsuit against a federal agency or instrumentality, but observed that it construed the Commission's continuing interest in the United States' views as an invitation to the Smithsonian as an electricity customer to provide its comments relative to the issues presented in the proceeding.

Further, the United States reiterated its concern that a change in the Smithsonian's electricity provider from Virginia Power to NOVEC might jeopardize the opening of the museum. It emphasized its concern that the construction schedule for the project not be compromised and requested that NOVEC's Petition for relief be denied.

On April 3, 2002, Dominion joined the United States in its request for an oral argument, asserting that the case raised novel issues of law and policy, and that the availability of counsel to respond to the Commission's questions

contemporaneously would be helpful to the Commission in distilling the detailed evidence in the proceeding.

Virginia Power also filed its comments and exceptions to the Chief Hearing Examiner's Report on April 3, 2002. In its comments, Dominion asserted that it had undertaken a significant investment to serve the Smithsonian and that the project was located on a large parcel of land in Fairfax County, most of which parcel was located in Virginia Power's service territory. Virginia Power contended that the Smithsonian had reaffirmed its selection of Dominion as the Smithsonian's preferred electric service provider. It asserted that the "geographic load center test" employed by the Chief Examiner had never been adopted in Virginia and that application of the test violated Virginia law. It argued that the geographic load test was incompatible with the requirement of § 56-234 of the Code of Virginia that a utility is to provide service to all customers along their lines desiring their service; and that the test disregards territorial boundaries and encourages the violation of a utility's certificate of public convenience and necessity. Dominion asserted that it had the legal right and obligation to provide electric service to the Smithsonian because: (1) the museum was located along its lines; (2) Dominion holds a certificate to provide service in the area in Fairfax County where a portion of the museum is located; and (3) the Smithsonian had requested

service from Virginia Power. Virginia Power urged the Commission to reject the Chief Examiner's recommendations, grant Dominion's counter petition, and hold that the Company has a statutory and legal obligation to serve all of the Smithsonian's project.

On April 10, 2002, NOVEC filed its "Response to Request for Oral Argument and Motion for Leave to File a Reply if Oral Argument is Granted." Among other things, the Cooperative asked that the Commission specify and limit the issues on which oral argument is held if the Commission seeks argument from the parties and that, if oral argument is permitted, it be permitted to file a reply to Dominion's April 3, 2002, response to the Chief Hearing Examiner's Report prior to such oral argument.

On April 11, 2002, the Cooperatives filed a response in opposition to the United States' and Dominion's requests for oral argument. They, too, requested that if oral argument were granted, the issues considered on argument be limited as requested by NOVEC and that the Commission grant NOVEC, the Cooperatives, and Staff leave to file written reply comments to those filed by the Smithsonian and Dominion.

On April 12, 2002, Virginia Power filed its response to NOVEC's and the Cooperatives' motions for leave to file a reply if oral argument were granted. Dominion opposed the requests to file written replies as unnecessary, inefficient, and



counterproductive. It urged the Commission to grant its request for oral argument.

On April 24, 2002, the United States filed its "Reply in Support of its Request for Oral Argument." Among other things, the United States asserted that oral argument would permit the United States to engage in dialogue with the Commission regarding the United States' concerns and would serve the public interest.

NOW THE COMMISSION, upon consideration of the record, the pleadings, the findings and recommendations of the March 20, 2002, Chief Hearing Examiner's Report, the comments and objections thereto, the United States' April 3, 2002, motion for oral argument, and the responses and replies to that motion, is of the opinion and finds: (1) that the United States' April 3, 2002, request for oral argument should be denied; (2) that NOVEC's requests for relief in its Petition for Declaratory Judgment and its Motion for Injunction should be denied; and (3) that Virginia Power's counter petition should be granted as set forth herein.

While 5 VAC 5-20-210 of the Commission's Rules of Practice and Procedure grants the Commission the discretion to authorize oral argument, subject to such limits as we may prescribe, we find it unnecessary to exercise such discretion, especially where, as here, the case participants have been afforded ample

opportunity to develop the record, facts, and law. We commend the parties and the Chief Hearing Examiner for their diligent efforts in this regard.

After review of the record and arguments made by counsel, we have determined not to adopt the recommendations of the March 20, 2002, Chief Hearing Examiner's Report. Instead, we find that Virginia Power is entitled to provide service to the Smithsonian's museum in Fairfax County from within Virginia Power's allotted certificated service territory as proposed by Virginia Power in this case.

Article IX, § 2 of the Constitution of Virginia provides that "[s]ubject to such criteria and other requirements as may be prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of...electric companies." We are a creation of the Virginia Constitution and have no inherent power. Our jurisdiction to regulate must be found either in constitutional grants or statutes. City of Norfolk v. Va. Elec. & Power Co., 197 Va. 505, 514 (1955). Consequently, our decision in this matter is directed to those

entities that are subject to our jurisdiction as provided by the Virginia Constitution and the laws of the Commonwealth.<sup>4</sup>

In this case, both Virginia Power and NOVEC hold certificates of public convenience and necessity to serve the real property owned by the Smithsonian. Section 56-265.3 of the Code of Virginia requires that a public utility cannot provide service in a particular territory unless it first obtains a certificate of public convenience and necessity. When a public utility, like NOVEC or Virginia Power, receives its certificate of public convenience and necessity, that certificate grants to the public utility not only the right to provide service to the service territory allotted to it, but the duty to furnish such services. Town of Culpeper v. Va. Elec. & Power Co., 215 Va. 189, 196 (1974). See also § 56-234 of the Code of Virginia.

Section 56-265.4 of the Code of Virginia prohibits one utility from operating in another utility's service territory unless the incumbent utility is providing inadequate service. Even then, the incumbent utility is afforded an opportunity to cure its service inadequacy.

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<sup>4</sup> We do not exercise jurisdiction over the Smithsonian in this proceeding, because the rates, charges, and contracts for services rendered to it, a federal entity, are removed from our jurisdiction by § 56-234 of the Code of Virginia. However, we welcome the Smithsonian's participation in this proceeding, because it has added the perspective of a customer, albeit a nonjurisdictional one, to our analysis.

Read together, §§ 56-265.3 and -265.4 of the Code of Virginia provide for exclusive service territories that are afforded significant protection. These statutes evidence an intent by the General Assembly to ensure and maintain the integrity of service territories.

There are circumstances, however, where two public utilities hold certificates of public convenience and necessity to serve real property that lies in both utilities' allotted service territories. Such is the case here. Consistent with Prince George, we must consider the practical realities of this situation.

As noted above, the Smithsonian is a new customer that has not been previously served at this property. Unlike the customer in Prince George, the Smithsonian did not manipulate its land purchases to reach into Virginia Power's service territory to place a meter. As Exhibits PGM-1, Attachment 2, and Exhibit RGT-14, Attachment B, demonstrate, the Smithsonian's new museum structure and associated facilities straddle the service territory boundaries of both NOVEC and Virginia Power. Under these circumstances, both NOVEC and Virginia Power have the right and duty to provide electric service to this new customer if requested to do so.<sup>5</sup>

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<sup>5</sup> This case is also distinguishable from Kentucky Utilities. That case involved an existing customer, Sigmon Coal Company, Inc. ("Sigmon"), that desired to take service from Powell Valley Electric Cooperative. Id., 1999

This finding protects exclusive service territories. Under circumstances as presented in this case, public utilities necessarily are at risk along their boundaries; such is the nature of certificated territories. Accordingly, given no extenuating circumstances or other practical considerations, where the facilities of a new customer straddle the contiguous service territory boundaries of two utilities, and with the absence of manipulation, that customer may request service from the utility of its choice. Section 56-234 of the Code of Virginia directs every utility to "provide adequate service and facilities at reasonable and just rates to any person, firm, or corporation along its lines desiring same."

In the circumstances of the instant case, both NOVEC and Virginia Power had the right and duty to serve the Smithsonian museum and associated facilities if requested to do so. They were also both at risk that the customer would request service from one rather than the other. Further, there are no other factors or practical realities necessitating a conclusion that the customer must take service from NOVEC.<sup>6</sup> In this case, the

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S.C.C. Ann. Rept. at 370. Sigmon's migration to Powell Valley Electric Cooperative, from Kentucky Utilities Company, would have idled a dedicated substation and other facilities that were being used to serve Sigmon as an existing customer. Id., 1999 S.C.C. Ann. Rept. at 376.

<sup>6</sup> The fact that Virginia Power has new temporary facilities in place to serve this customer has not influenced our analysis. Virginia Power necessarily assumed the risk of any such investment.

Smithsonian, a new customer, desired to take electric service from Virginia Power.

Finally, we agree with the Chief Hearing Examiner, the parties to the case, and Staff that it is impractical to require that electric service be extended by both NOVEC and Virginia Power to the Smithsonian museum. The Utility Facilities Act was intended to prevent economic waste and the public inconvenience resulting from duplication of utilities' facilities. See Earl S. Tyson and Betty B. Tyson v. Central Virginia Electric Cooperative, Case No. PUE-1980-00002, 1980 S.C.C. Ann. Rept.

283. Dual metering, multiple bills from two service providers, and dual electric service lines exemplify the type of economic waste and public inconvenience the Act was intended to avoid. The circumstances of this case do not warrant forcing the customer to take service from two public utilities.

Based on the pleadings and the record in this case, and on our conclusion that Virginia Power may properly and legally provide service to the Smithsonian, NOVEC's requests for relief are denied.

Accordingly, IT IS ORDERED THAT:

(1) United States' request for oral argument is hereby denied.

(2) NOVEC's requests for relief in its Petition for Declaratory Judgment and its Motion for Injunction are hereby denied.

(3) Virginia Power's October 12, 2001, counter petition is granted to the extent it requests the Commission to find that Virginia Power may provide service to the Smithsonian museum from its service territory previously allotted by this Commission to Virginia Power.

(4) There being nothing further to be done in this matter, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein made a part of the Commission's file for ended causes.